

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEGERG, LISA STEIN and
AUDREY HAYS,

Plaintiffs,

vs.

**DECLARATION OF
DONALD W. O'BRIEN, JR., ESQ.**

LESTER EBER; ALEXBAY, LLC f/k/a LESTER
EBER, LLC; CANANDAIGUA NATIONAL BANK
& TRUST COMPANY; ESTATE OF ELLIOTT W.
GUMAER, JR.; EBER BROS. & CO., INC.; EBER
BROS. WINE AND LIQUOR CORP.; EBER BROS.
WINE & LIQUOR METRO, INC.; EBER-
CONNECTICUT, LLC; and WENDY EBER,

Civ. Action No.: 1:16-cv-09517-LAK

Defendants.

DONALD W. O'BRIEN, JR., ESQ., under penalty of perjury, declares and states
as follows:

1. I am an attorney and member of the firm of Woods Oviatt Gilman LLP,
counsel for the proposed intervenor, Canandaigua National Corporation d/b/a
Canandaigua National Bank & Trust ("CNB" or "the Bank").

2. CNB was an original defendant in this action. By stipulation filed on
August 7, 2018, the action as against CNB was dismissed with prejudice [Docket
No. 117]. For the following reasons, CNB is constrained to now seek intervention to
protect its interests.

3. I make this declaration in support of CNB's motion to intervene for the
purpose of formally placing before the Court for resolution in this action the conflict
between the Plaintiffs and the Defendants as to any residual interest CNB may retain, or

any residual authority CNB may possess, as to the testamentary trust created upon the death of Allen Eber, the father of defendant Lester Eber, and the grandfather of the Plaintiff and Defendant, Wendy Eber (“the Trust”). In particular, CNB seeks to intervene so that the Court can resolve the dispute as to the distribution of the shares of stock in Eber Bros. & Co., Inc.; CNB will then abide by the determination of this Court insofar as CNB retains any residual power or authority over the distribution of stock and/or the delivery of stock powers.

BACKGROUND

4. Proposed Intervenor, CNB, was a Co-Trustee of the Trust starting in 2007.

5. On June 1, 2017, the Monroe County Surrogate’s Court entered an Order for Judicial Settlement of Final Account of Successor Co-Trustee, Resignation and Discharge of Co-Trustee and Termination of Trust (a copy of this Order is attached hereto as **Exhibit “1”**).

6. The Surrogate’s Court Order, *inter alia*, discharged CNB as Co-Trustee, directed the distribution of the Trust assets and terminated the Trust. Defendant, Lester Eber, as one of three Co-Trustees of the Trust, was a party to the proceeding before the Monroe County Surrogate. The record reflects that he was represented in the proceeding by James Vazzana, Esq., a well-known estates and trust attorney practicing in Rochester, New York.

7. As part of CNB’s efforts to distribute the assets of the Trust and on August 1, 2017, my partner, Lorisa D. LaRocca, Esq., sent a letter to Mr. Vazzana providing him with a distribution sheet with a proposed distribution of securities,

including the stock in Eber Bros. & Co., Inc. (“Eber Bros.” or “the Company”) Class A, Class B and 6% non-cumulative securities (copies of Ms. LaRocca’s August 1, 2017 letter and enclosures are attached hereto as **Exhibit “2”**). Ms. LaRocca was responding to correspondence from Mr. Vazzana in which he questioned the original distribution due to the fact that distributions had been made previously to one of Allen Eber’s heirs and those distributions required adjustments to the final distribution schedule.

8. Upon becoming a Co-Trustee of the Trust, CNB advised Lester Eber that the Company’s securities were considered “off guidance list securities” and did not meet CNB’s criteria for continued retention. As a result, CNB pointed out to Mr. Eber that, while it would hold the stock, it was not responsible for monitoring the future performance of the securities (a copy of this acknowledgement is attached hereto as **Exhibit “3”**).

9. Because CNB assumed no responsibility for the performance of the closely held securities, during the time it served as a Co-Trustee, CNB was never furnished with the corporate record book for Eber Bros. the stock register or a copy of the corporate bylaws.

LESTER EBER’S ATTEMPT TO PURCHASE THE EBER BROS. STOCK

10. On October 31, 2018, I received an e-mail from Paul F. Keneally, Esq., counsel for the Eber Defendants in the instant action. Attached to Mr. Keneally’s e-mail was a purported “Notice of Intent to Purchase Shares” signed by Lester Eber, intending to give CNB notice of his intent to purchase all of the shares of Eber Bros.’ capital stock

still purportedly held by the Trust (copies of Mr. Keneally's e-mail and the Notice of Intent to Purchase Shares are attached hereto as **Exhibit "4"**).

11. Later that same day, Brian C. Brook, Esq., counsel for the Plaintiffs, responded to Mr. Keneally's purported notice. In his e-mail, Mr. Brook asserted that the Notice of Intent to Purchase Shares was "defective" in that it failed to identify the legal basis for the right to purchase.¹ Mr. Brook also noted that the shares "have already been transferred and such transfer ordered by the Surrogate's Court" and, as a result, claim that the Secretary of Eber Bros., Inc. had a duty to transfer the securities as directed in the distribution and that the failure to do so constituted an additional breach of fiduciary duty. Mr. Brook concluded his e-mail by stating: "I direct CNB to disregard Lester's notice" (a copy of Mr. Brooks' October 31, 2018 e-mail is attached hereto as **Exhibit "5"**).

12. On December 17, 2018, I received an e-mail from John Herbert, Esq. who advised me that he was "co-counsel to Lester Eber along with Paul Keneally." Mr. Herbert's e-mail attached a second purported Notice of Intent to Purchase Shares of Eber Bros. which, in addition to the information contained in the October 31, 2018 Notice, contained a purchase price of zero dollars, (copies of Mr. Herbert's December 17, 2018 e-mail and the attached Notice of Intent to Purchase shares are attached hereto as **Exhibit "6"**).

¹ Your declarant was furnished with a copy of the bylaws on October 31, 2018. According to Article XII(1), the notice of intent to purchase must state "the terms of the proposed transfer." (a copy of the bylaws of Eber Bros is attached as Exhibit "A" to Docket No. 143 at pages 6 through 17). The October 31, 2018, notice did not set forth any terms of the proposed transfer, for example, the proposed purchase price.

13. It is my understanding that there is a motion pending before the Court for the Plaintiffs to amend their Complaint. I have reviewed the proposed Third Amended Complaint [Docket No. 174-1] filed on behalf of the Plaintiffs. In their “updated proposed” Third Amended Complaint, the Plaintiffs have devoted considerable attention to Lester Eber’s efforts to purchase all of the shares of Eber Bros. In particular, ¶¶ 306-331 under a subsection entitled “Enjoin Lester’s Threat and Taking of Shares,” the Plaintiffs challenge Defendant, Lester Eber’s ability to purchase these shares or, in the alternative, the propriety of him doing so.

14. On or about October 11, 2017, my partner, Lorisa LaRocca, Esq., sent to Lester Eber’s counsel, James G. Vazzana, Esq. and Plaintiffs’ counsel, Brian C. Brook, Esq., their clients’ respective copies of stock powers transferring their shares of Eber Bros. pursuant to CNB’s previously furnished distribution schedule.² As Ms. LaRocca notes: “[a]s the Bank never had possession of the company stock book or other corporate documents and, despite requests, the Bank was not provided with the same, we were required to complete these transfers via these Stock Powers as opposed to issuing new stock certificates.” Ms. LaRocca then asked for further guidance with respect to the original stock powers (a copy of Ms. LaRocca’s October 11, 2017 letter with enclosures is attached hereto as **Exhibit “7”**). Until Mr. Keneally’s e-mail more than one year later, CNB received no guidance whatsoever from the Company’s corporate secretary or anyone else purporting to act on behalf of Eber Bros.

² While CNB recognizes that Mr. Eber now questions whether this communication provided him with *legal* notice of the manner in which the stock powers for the Eber Bros. stock would be distributed, we believe that he received *actual* notice of the proposed distribution of the stock. It should be noted that Mr. Eber was also a Co-Trustee of the Trust and joined in the application to terminate the Trust and distribute its assets.

RELIEF SOUGHT

15. Because there is a dispute between the Plaintiffs and the Defendants as to Mr. Eber's right to purchase the Plaintiffs' stock in Eber Bros. and the outcome of this dispute will affect the interests of CNB, intervention is necessary. Since Mr. Eber has requested that CNB deliver the stock to him and Plaintiff's counsel objects, CNB acts at its own peril in endorsing either position.

16. Your declarant, therefore, on behalf of the proposed intervenor, requests that this Court allow CNB to intervene for the purpose of formalizing the joinder of the issue as to the disposition of the Eber Bros. stock and pursuing its resolution by this Court in the context of the pending action where the issue has already been raised.³ We would ask that, at a minimum, the Court (1) direct the parties to (A) refrain from commencing any independent actions against CNB to address Mr. Eber's efforts to purchase the stock in Eber Bros.; (B) require the parties to litigate any issues relating to the disposition of the stock in this action; (2) adjudicate those issues in this action; and (3) provide CNB with guidance as to what steps, if any, CNB needs to take to implement the final determination of the Court in that regard.

17. I have sought the consent of counsel for the parties to the relief sought with this motion. Insofar as the motion to intervene and the request that the disposition of the stock be adjudicated in this action are concerned, they have all given their consent to the application, even though they are not taking a position with respect to any of the specific

³ If the Court were to grant the Plaintiffs' pending motion to amend, the issue in this regard would be joined as soon as the Defendants responded to the Plaintiffs' allegations with respect to the disposition of the stock in question. In that event, no separate interpleader claim should be necessary.

representations contained in this Declaration or otherwise waiving any claims or arguments their respective clients might have.

A handwritten signature in black ink, appearing to read 'D. O'Brien', written over a horizontal line.

Donald W. O'Brien, Jr., Esq.

DATED: February 5, 201
Rochester, New York

EXHIBIT 1

CT

At a Surrogate's Court of the State of New York
held in and for the County of Monroe at
Rochester, New York, on May 18, 2017.

PRESENT: HON. JOHN M. OWENS, Surrogate

FINAL ACCOUNTING OF THE CANANDAIGUA
NATIONAL BANK AND TRUST COMPANY, AS
SUCCESSOR CO-TRUSTEE OF RESIDUARY
TRUST UNDER WILL OF ALLEN EBER DATED
OCTOBER 27, 1969

**ORDER FOR JUDICIAL
SETTLEMENT OF FINAL
ACCOUNT OF SUCCESSOR CO-
TRUSTEE, RESIGNATION AND
DISCHARGE OF CO-TRUSTEE
AND TERMINATION OF TRUST**

File No. 1970^{PT}1952 /D

UPON reading and filing the duly verified Petition for Judicial Settlement of Final Account of Successor Co-Trustee, Resignation and Discharge of Co-Trustee and Termination of Trust, verified by Petitioner, Canandaigua National Bank and Trust Company, on February 15, 2017; and

UPON all proofs of service having been duly filed with the Court; and

THERE having been no Objections filed with the Court by any of the appearing parties;
and

UPON, the appearance of Canandaigua National Bank through its counsel, Woods Oviatt Gilman LLP, Lorisa D. LaRocca, Esq. and William G. Bauer, Esq., and the appearance of Lester Eber, through his counsel, Wiedman, Vazzana, Corcoran and Volta, P.C., James G. Vazzana, Esq. at an adjourned return date of this Court on May 18, 2017; and

UPON, the appearance of Calihan Law PLLC, Robert B. Calihan, Esq., on behalf of Elliott W. Gumaer, Jr., having been waived by the Court at counsel's request;

NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED AND DECREED that the Final Account of Canandaigua National Bank and Trust Company, as Successor Co-Trustee of the Residuary Trust Under Will of Allen Eber dated October 27, 1969 (the "Trust"), is hereby judicially settled and Canandaigua National Bank and Trust Company is discharged from any liability in the administration of the

Trust from its receipt of assets until distribution of the Trust assets, in its capacity as Successor Co-Trustee of the Trust; and it is further

ORDERED, ADJUDGED AND DECREED that the Trust be terminated and that the Trust assets be distributed to the beneficiaries in accordance with the terms set forth in the Final Account and allowed as filed (and adjusted), and that the following is a summary thereof as settled:

SUMMARY

PRINCIPAL ACCOUNT

CHARGES:

Schedule A	Principal received	\$1,409,047.07
Schedule AA	Subsequent receipts of principal	12,000.44
Schedule A-1	Realized increases in principal	5,842.73
Schedule G	Unrealized increases in principal	<u>163,793.19</u>
	Total Principal Charges	\$1,590,683.43

CREDITS:

Schedule B	Realized decreases in principal	\$ 768,370.36
Schedule C	Administration expenses	48,535.21
Schedule E	Distributions of principal	88,851.48
Schedule G	Unrealized decreases in principal	<u>10,827.35</u>
	Total Principal Credits	\$ 916,584.40

Principal balance on hand shown by Schedule G	\$ 674,099.03
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INCOME ACCOUNT

CHARGES:

Schedule AA-1	Income received	\$ 2,868.90
Schedule A-2	Income collected	203,676.91
Schedule A-3	Realized increases in income	<u>229.15</u>
	Total Income Charges	\$ 206,774.96

CREDITS:

Schedule C-2	Administrative expenses	\$ 18,778.18
Schedule E-1	Distributions of income	<u>170,529.29</u>
	Total Income Credits	\$ <u>189,307.42</u>
	Income remaining on hand as shown in Schedule G-1	\$ 17,467.49

COMBINED ACCOUNTS

Principal on hand:	Cash	\$ 35,523.28
	Other assets	<u>638,575.75</u>
	Total principal on hand	\$674,099.03
Income on hand:	Cash	<u>17,467.49</u>
	Total Assets on hand	\$691,566.52

ORDERED, ADJUDGED AND DECREED that petitioner pay the remaining cash and transfer, assign and deliver the other remaining assets as shown in the account as follows:

To: Canandaigua National Bank

As and for the commissions in the sum of \$ 8,114.86

To: Woods Oviatt Gilman LLP

For legal services rendered in the sum of \$ TBD

For costs and disbursements \$ TBD

Balance \$ 683,451.66*

To be distributed as follows:

To: Daniel Kleeberg (1/6 share) \$ 113,908.61*

To: Lisa Stein (1/6 share) \$ 113,908.61*

To: Audrey Hays (1/3 share) \$ 227,817.22*

To: Lester Eber (1/3 share) \$ 227,817.22*

*Less Woods Oviatt Gilman LLP fees and disbursements – amount to be determined.

ORDERED, ADJUDGED AND DECREED that, upon its completion of the distribution of the Trust assets, as set forth in the Final Account and this Order, Canandaigua National Bank and Trust Company shall be discharged as Successor Co-Trustee of the Trust; and it is further

ORDERED, ADJUDGED AND DECREED that, the sum of \$ 5757.50 in fees and 1460 in disbursements shall be paid from the Trust to Woods Oviatt Gilman LLP, as attorneys for Petitioner in connection with its services ^{and disbursements} in regard to this proceeding.

Dated: June 1, 2017

HON.


JOHN M. OWENS, SURROGATE

SURROGATE'S COURT
MONROE COUNTY

JUN - 1 2017

FILED

EXHIBIT 2

700 Crossroads Building
2 State Street, Rochester, New York 14614
P 585.987.2800 F 585.454.3968

Writer's Direct Dial Number: 585.987.2834
Writer's Direct Fax Number: 585.987.2934
Email: llarocca@woodsoviatt.com



ATTORNEYS
woodsoviatt.com

1900 Main Place Tower
Buffalo, New York 14202
P 716.248.3200 F 716.854.5100

August 1, 2017

Via Email and First Class Mail: jgvazzana@frontiernet.net

James G. Vazzana, Esq.
Wiedman, Vazzana, Corcoran & Volta, P.C.
5 S. Fitzhugh Street, Room 230
Rochester, New York 14614

Re: CNB/Eber Proposed Distributions

Dear Jim:

This letter is in follow-up to your prior correspondence directed to Rita Nischal at Canandaigua National Bank dated July 19, 2017. Upon further review of the Bank's records, Ms. Nischal was able to confirm that, although Mr. Hawks previously accounted for equalization of the distributions made to Erica Stein (prior to 2017) "on paper" annually, these adjustments were not actually made to the assets at that time. Accordingly, the Bank has re-calculated the necessary equalizations, consistent with the prior distribution sheets that Mr. Hawks provided to the family each year, and the revised Distribution Schedule and Step-Down Chart are enclosed herewith. Ms. Stein's prior distributions, including those received in 2017, are now all properly reflected. Should you have any questions, please feel free to contact me. Otherwise, please have your client return the executed Receipt and Release to Ms. Nischal.

Very truly yours,

WOODS OVIATT GILMAN LLP

A handwritten signature in cursive script, appearing to read "Lorisa D. LaRocca".

Lorisa D. LaRocca
Please direct responses to Rochester Office

LDL/ldl

Cc: Rita Nischal, Esq.

Residuary TUW Allen Eber Proposed Distribution of Securities

Assets	Total Shares on Hand to be Distributed	Total Tax Cost Basis	Market Value as of 6.20.2017	Daniel Kleeberg 68.76% of 23.595%	Lisa Stein 31.24% of 23.595%	Audrey Hays 38.202%	Lester Eber 38.202%
AT&T	1,000 (sell 1)	24,390.00	38,910.00	162	73	382	382
Chemours Co.	80 (sell 3)	916.94	3,040.00	12	5	30	30
Clorox Co	300 (sell 2)	18,699.00	42,345.00	48	22	114	114
Du Pont De Nemours Ei Co	400 (sell 3)	17,923.06	33,424.00	64	29	152	152
Eber Bros & Co Class A	1,850	631,238.50	0.00	301 (+1)	137 (+1)	706	706
Eber Bros & Co Class B	290	462,973.99	0.00	47	21	111 (+1)	111 (+1)
Eber Bros & Co 6% Non-Cumulative	2,000	200,000.00	0.00	324	147	764	765 (+1)
Exxon-Mobile Corp	2,190 (sell 2)	4,903.55	181,244.40	355	161	836	836
*Lilly Eli & Co	500 (sell 1)	17,110.00	41,170.00	81	36	191	191
Lockheed Martin Corp Com	300 (sell 2)	20,751.00	84,690.00	48	22	114	114
Microsoft Corporation	800 (sell 2)	20,320.00	56,696.00	129	58	305	305
Pfizer Inc.	886 (sell 2)	15,518.29	29,432.92	143	65	338	338
Dodge & Cox Income Fund	3,591.9540 (sell 0.0361 units)	50,000.00	49,748.56	582.7558	264.7657	1,372.1982	1,372.1982
Franklin Templeton Global Bond Inst.	3,598.2690 (sell 0.0360 units)	48,792.52	44,258.71	583.7804	265.2312	1,374.6107	1,374.6107
Vanguard Int. Term Bd Index Admiral	4,122.0120 (Sell 0.0413 units)	50,000.00	47,361.92	668.7520	303.8367	1,574.6910	1,574.6910

* Please note, proceeds from the sale of the shares will be divided accordingly and will impact cash distributions.

EBER TRUST
1108114

Distribution Step-Down
6/20/2017
less Eber Stock

\$677,754.19

\$12,000 Distribtuion 2012 (E. Stein)
\$12,000 Distribtuion 2013 (E. Stein)
\$12,000 Distribtuion 2014 (E. Stein)
\$12,000 Distribtuion 2015 (E. Stein)
\$12,000 Distribtuion 2016 (E. Stein)

\$6,000 Distribution 2017 - Jan-June (E. Stein)

\$225,918.06
-66,000.00

L. Eber
\$258,918.06
(38.202)

Kleeberg Family
\$159,918.06
(23.595)

A. Nan Boslos Hays
\$258,918.06
(38.202)

Income Allocation
\$9,335.32

\$3,566.28

\$2,202.76

\$3,566.28

Lisa Stein	\$688.14
Daniel Kleeberg	\$1,514.62

Lisa Stein
\$49,959.03
(31.240)

Daniel Kleeberg
\$109,959.03
-68.76

EXHIBIT 3

Wealth
Strategies
Group



Canandaigua
National
Bank & Trust

March 26, 2012

Residuary TUW Allen Eber
c/o Lester Eber
95 Allens Creek Rd.
Bldg 2, Suites 10 & 11
Rochester, NY 14618-3250

Re: Account Number 1108114

Dear Mr. Eber:

There is presently being held in your portfolio the following common stocks:

1,850 Eber Bros & Co Class A
290 Eber Bros & Co Class B
2,000 Eber Bros & Co 6% Non-Cumulative

These stocks are considered off-guidance list securities, and do not meet our criteria for continued retention in your portfolio. We are not following these securities or providing investment advice on these securities. It is important for you to understand that Canandaigua National Bank and Trust is not responsible for monitoring the future performance of these securities.

If you desire to continue to retain these holdings, we must have your written direction to do so. Please check the appropriate space below, sign, date, and return the signed copy of this letter in the envelope provided.

If you would like to discuss our recommendations for the replacement of these securities, or if a further discussion would be helpful to you, please telephone me at (585) 394-4260, ext. 36040.

Sincerely:

A handwritten signature in black ink, appearing to read 'Richard H. Hawks, Jr.', written over a horizontal line.

Richard H. Hawks, Jr.
Senior Vice President & Senior Fiduciary Officer

Authorization:

☒ Until you receive further written instructions from me, you are authorized and directed to retain in my account, without liability, all of the above securities currently held, including stock received in the future as a result of stock splits or purchases directed by me.

☐ I do not wish to retain any of the above securities in the above account. Please sell all stock currently held.

REQUIRED TO HOLD UNDER TERMS OF TRUST
by Anna A King AUP 3/27/2012
Signature Date

EXHIBIT 4

O'Brien, Dan

From: Keneally, Paul F. <PKeneally@underbergkessler.com>
Sent: Wednesday, October 31, 2018 10:29 AM
To: LaRocca, Lorisa D.; O'Brien, Dan
Cc: Ramsey, Colin D.; Brian C. Brook; daryoush@clintonbrook.com; John Herbert Esq
Subject: Notice
Attachments: 10302018171620-0001.pdf

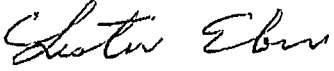
Counsel: FYI

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To: Allen Eber Trust
c/o Canandaigua National Bank and Trust Company
72 South Main St.
Canandaigua, NY 14424
Attn: Rita Nischal, Esq.

NOTICE OF INTENT TO PURCHASE SHARES

The undersigned hereby gives notice of my intent to purchase all shares of capital stock of Eber Bros. & Co., Inc. (the "Company") of which the Allen Eber Trust is the registered holder that are proposed to be transferred to Daniel Kleeberg, Lisa Stein or Audrey Hays pursuant to Article XII of the By-Laws of the Company.



Lester Eber

EXHIBIT 5

O'Brien, Dan

From: Brian C. Brook <Brian@clintonbrook.com>
Sent: Wednesday, October 31, 2018 11:49 AM
To: LaRocca, Lorisa D.; O'Brien, Dan; Keneally, Paul F.
Cc: Ramsey, Colin D.; Daryoush Behbood; john herbert Esq
Subject: Re: Notice

Paul,

This notice is defective in that it fails to identify the legal basis for any right to purchase. We have reviewed the by-laws and see no such right.

Moreover, the shares have already been transferred and such transfer ordered by the Surrogate's Court over a year ago. Lester received notice of it and did not object to that at the time and therefore waived his right to try to seek any alternative distribution or to otherwise prevent my clients from receiving their shares. Wendy, as Secretary, indisputably had a duty to effectuate the transfers as specified by the Surrogate's Court and CNB, and her and your continued resistance constitutes contempt of court, in addition to a continuing breach of fiduciary duty.

Dan, on behalf of the legitimate majority shareholders of Eber Bros & Co., Inc., a company which lacks any validly constituted Board of Directors, I direct CNB to disregard Lester's notice.

Brian C. Brook
Clinton Brook & Peed
New York | New Jersey | Washington DC
(212) 256-1957
brian@clintonbrook.com

From: Keneally, Paul F.
Sent: Wednesday, October 31, 7:29 AM
Subject: Notice
To: LaRocca Lorisa D., Dan O'Brien
Cc: Ramsey, Colin D., Brian C. Brook, Daryoush Behbood, john herbert Esq

Counsel: FYI

CONFIDENTIALITY NOTICE: This email message and any attachments are confidential and intended solely for the named addressee(s). They may be subject to legal, professional or other privilege or may be protected by other legal rules. They must not be disclosed to anyone without the sender's authorization. If you are not the intended recipient or authorized to receive this email for the intended recipient, you may not disclose, copy, distribute or retain this message or any part of it. Please notify us if you received this message but were not the intended recipient. Thank you, Underberg & Kessler LLP

EXHIBIT 6

O'Brien, Dan

From: John Herbert <herbertoffice24@gmail.com>
Sent: Monday, December 17, 2018 3:51 PM
To: rnischal@cnbank.com
Cc: Keneally, Paul F.; Colin Ramsey; O'Brien, Dan; Brian C. Brook
Subject: Notice
Attachments: call20181217_12315763.pdf

Rita

I am co-counsel to Lester Eber along with Paul Keneally.

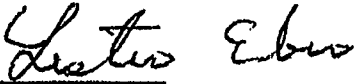
Please see the attached notice from Lester Eber with respect to shares of capital stock of Eber & Co., Inc.

John S. Herbert, Esq.
Herbert Office
917-385-9436
herbertoffice24@gmail.com
facebook: Herbert Office

To: Allen Eber Trust
c/o Canandaigua National Bank & Trust Company
72 South Main St.
Canandaigua, NY 14424
Attn: Rita Nischal, Esq.

In connection with the Notice of Intent to Purchase Shares of Eber Bros. & Co., Inc. given by Lester Eber to the Allen Eber Trust on October 30, 2018, attached hereto, the undersigned notifies you that the purchase price, the book value of the shares as it appears in the books of the corporation as of May 31, 2018, is \$0.

Please deliver physical possession of the stock certificate for these shares, which I understand is currently in your possession, with your endorsement thereof, to me promptly, at the following address:

A handwritten signature in cursive script that reads "Lester Eber".

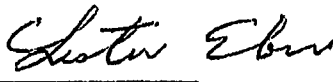
Lester Eber
15 Coral Way
Rochester, NY 14618

Dated: December 17, 2018

To: Allen Eber Trust
c/o Canandaigua National Bank and Trust Company
72 South Main St.
Canandaigua, NY 14424
Attn: Rita Nischal, Esq.

NOTICE OF INTENT TO PURCHASE SHARES

The undersigned hereby gives notice of my intent to purchase all shares of capital stock of Eber Bros. & Co., Inc. (the "Company") of which the Allen Eber Trust is the registered holder that are proposed to be transferred to Daniel Kleeberg, Lisa Stein or Audrey Hays pursuant to Article XII of the By-Laws of the Company.



Lester Eber

EXHIBIT 7

700 Crossroads Building
2 State Street, Rochester, New York 14614
P 585.987.2800 F 585.454.3968

Writer's Direct Dial Number: 585.987.2834
Writer's Direct Fax Number: 585.987.2934
Email: llarocca@woodsoviatt.com



ATTORNEYS
woodsoviatt.com

1900 Main Place Tower
Buffalo, New York 14202
P 716.248.3200 F 716.854.5100

October 11, 2017

James G. Vazzana, Esq.
Wiedman, Vazzana, Corcoran & Volta, P.C.
5 S. Fitzhugh Street, Room 230
Rochester, New York 14614

Brian C. Brook, Esq.
Clinton Brook & Peed
641 Lexington Avenue, 13th Floor
New York, NY 10022

Re: Transfer of Eber Bros. & Co., Inc. stock

Dear Jim and Brian:

Enclosed please find your clients' respective copies of the Stock Powers transferring their shares of Eber Bros. & Co., Inc. pursuant to Canandaigua National Bank and Trust Company's distribution schedule. As the Bank never had possession of the company's stock book or other corporate documents and, despite request, the Bank has not been provided with the same, we were required to complete these transfers via these Stock Powers as opposed to issuing new stock certificates. We are currently retaining the original Stock Powers which I have affixed to each original Stock Certificate that the Bank received when it became Successor Co-Trustee. We will continue to do so unless and until such time as we are advised as to whom these originals should be provided given the apparent inability to locate the company's stock book and affiliated records. It is my understanding that the securities were transferred to your clients' respective financial institutions on September 29th and that the remaining assets were electronically transferred last week as well.

Very truly yours,

WOODS OVIATT GILMAN LLP

Lorisa D. LaRocca
Please direct responses to Rochester Office

LDL/ldl/kdk

Enclosures

cc: Rita Nischal, Esq.
William G. Bauer, Esq.



INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK



EBER BROS. & CO., INC.

AUTHORIZED TO ISSUE 10,000 SHARES
2,000 8% NON-CUMULATIVE PREFERRED SHARES, PAR VALUE \$100 EACH
1,850 CLASS A VOTING COMMON SHARES, PAR VALUE \$10 EACH
6,150 CLASS B NON-VOTING COMMON SHARES, PAR VALUE \$10 EACH

Lester Eber, Elliott W. Gumaer, Jr., Central Trust Company
"Co - tr. U/W Allen Eber/Residuary"

This Certifies that

owner of One Thousand Eight Hundred and Fifty **CLASS A VOTING COMMON SHARES**

Par Value \$10 Each of **EBER BROS. & CO., INC.**

transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. A statement of the designations preferences privileges and voting powers or restrictions or qualifications of the shares of each class of stock is printed upon the back hereof and made part hereof with the same force and effect as if herein at length fully set forth, and this Certificate and the shares represented thereby are issued and shall be held subject to all of the provisions of the Certificate of Incorporation, By-Laws and Amendments.

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed this 10th *day of* May *1991*

Stanley S. Otto
SECRETARY-TREASURER

Lester Eber
PRESIDENT

FULLY PAID AND NON-ASSESSABLE

CLASS A COMMON

078650102

STOCK POWER

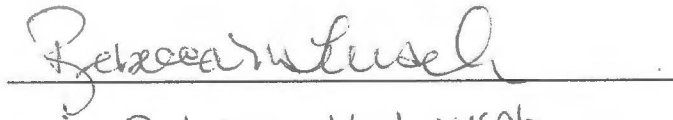
FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Daniel Kleeberg Three Hundred One (301) shares of the total One Thousand Eight Hundred Fifty (1850) shares issued, \$10 par value, of the Class A voting common shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in his name on the books of the Corporation represented by Certificate Numbered A6 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

Dated: October 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:



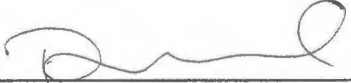
Print Name:

Rebecca M. Leusch

STOCK POWER

FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Lisa Stein One Hundred Thirty Seven (137) shares of the total One Thousand Eight Hundred Fifty (1850) shares issued, \$10 par value, of the Class A voting common shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in her name on the books of the Corporation represented by Certificate Numbered A6 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

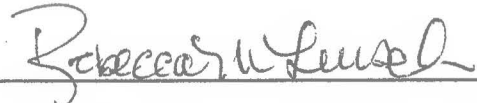
Dated: October 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:

Print Name:



Rebecca M. Leusch

STOCK POWER

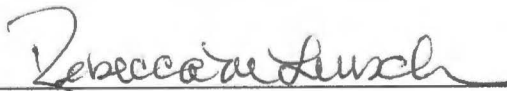
FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Audrey Hays Seven Hundred and Six (706) shares of the total One Thousand Eight Hundred Fifty (1850) shares issued, \$10 par value, of the Class A voting common shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in her name on the books of the Corporation represented by Certificate Numbered A6 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

Dated: Oct 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:



Print Name:

Rebecca M. Lensch

78659110



INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK

EBER BROS. & CO., INC.

AUTHORIZED TO ISSUE 10,000 SHARES

2,000 6% NON-CUMULATIVE PREFERRED SHARES, PAR VALUE \$100 EACH

1,850 CLASS A VOTING COMMON SHARES, PAR VALUE \$10 EACH

6,150 CLASS B NON-VOTING COMMON SHARES, PAR VALUE \$10 EACH

CLASS B COMMON

This Certifies that

LESTER EBER, ELLIOTT W. GUMAER, JR., M & T BANK
 CO-TRUSTEES U/W ALLEN EBER RESIDUARY *as the*
 owner of TWO HUNDRED NINETY CLASS B NON-VOTING COMMON SHARES

Par Value \$10 Each of EBER BROS. & CO., INC.

transferrable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. A statement of the designations, preferences, privileges and voting powers or restrictions or qualifications of the shares of each class of stock is printed upon the back hereof and made part hereof with the same force and effect as if herein at length fully set forth and this Certificate and the shares represented thereby are issued and shall be held subject to all of the provisions of the Certificate of Incorporation. By Laws and Amendments.

In Witness Whereof the Corporation has caused this Certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed
 this 2ND day of DECEMBER 19 97

Robert M. Sellers
 SECRETARY - TREASURER

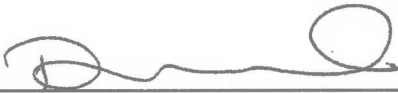
Robert M. Sellers
 PRESIDENT

FULLY PAID AND NON-ASSESSABLE

STOCK POWER

FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Daniel Kleeberg Forty Seven (47) shares of the total Two Hundred Ninety (290) shares issued, \$10 par value, of the Class B non-voting common shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in his name on the books of the Corporation represented by Certificate Numbered B68 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

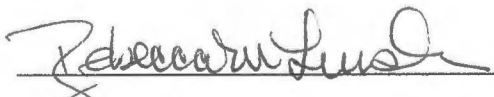
Dated: Oct. 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:

Print Name:

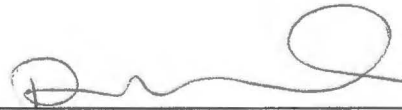


Rebecca M. Leusch

STOCK POWER

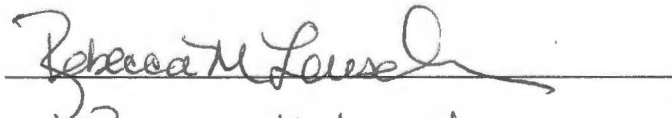
FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Lisa Stein Twenty One (21) shares of the total Two Hundred Ninety (290) shares issued, \$10 par value, of the Class B non-voting common shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in her name on the books of the Corporation represented by Certificate Numbered B68 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

Dated: Oct. 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:



Print Name:

Rebecca M. Leusch

STOCK POWER

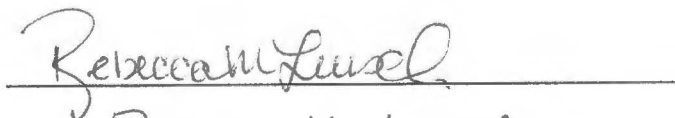
FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Audrey Hays One Hundred Eleven (111) shares of the total Two Hundred Ninety (290) shares issued, \$10 par value, of the Class B non-voting common shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in her name on the books of the Corporation represented by Certificate Numbered B68 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

Dated: October 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:



Print Name:

Rebecca M. Leisch

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK

EBER BROS. & CO., INC.

AUTHORIZED TO ISSUE 10,000 SHARES

2,000 9% NON-CUMULATIVE PREFERRED SHARES, PAR VALUE \$100 EACH

1,850 CLASS A VOTING COMMON SHARES, PAR VALUE \$10 EACH

6,150 CLASS B NON-VOTING COMMON SHARES, PAR VALUE \$10 EACH

PREFERRED

This Certificate shall be valid in the
sum of Two thousand 6% NON-CUMULATIVE PREFERRED SHARES

Par Value \$100 Each of **EBER BROS. & CO., INC.**

transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed. A statement of the designations, preferences, privileges and voting powers or restrictions or qualifications of the shares of each class of stock is printed upon the back hereof and made part hereof with the same force and effect as if herein at length fully set forth, and this Certificate and the shares represented thereby are issued and shall be held subject to all the provisions of the Certificate of Incorporation, By-Laws and Amendments.

In Witness Whereof, the Corporation has caused this Certificate to be signed by its duly authorized officer and its corporate seal to be hereunto affixed this 6th day of September 1989

Stanley J. Otto
 SECRETARY-TREASURER

Arthur E. Eber
 PRESIDENT


FULLY PAID AND NON-ASSESSABLE

378652001

STOCK POWER

FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Daniel Kleeberg Three Hundred Twenty Four (324) shares of the total Two Thousand (2000) shares issued, \$100 par value, of the 6% non-cumulative preferred shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in his name on the books of the Corporation represented by Certificate Numbered P6 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

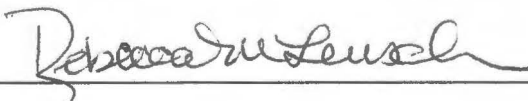
Dated: Oct 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:

Print Name:




Rebecca M. Leusch

STOCK POWER

FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Lisa Stein One Hundred Forty Seven (147) shares of the total Two Thousand (2000) shares issued, \$100 par value, of the 6% non-cumulative preferred shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in her name on the books of the Corporation represented by Certificate Numbered P6 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

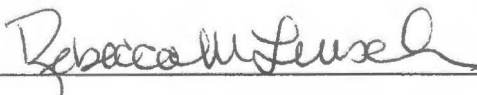
Dated: Oct. 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:

Print Name:




Rebecca M. Leusch

STOCK POWER

FOR VALUE RECEIVED, Canandaigua National Bank and Trust Company, in its capacity as Co-Trustee of the Trust U/W of Allen Eber hereby sells, assigns and transfers unto Audrey Hays Seven Hundred Sixty Four (764) shares of the total Two Thousand (2000) shares issued, \$100 par value, of the 6% non-cumulative preferred shares of Eber Bros. & Co., Inc., a New York corporation (the "**Corporation**"), standing in her name on the books of the Corporation represented by Certificate Numbered P6 herewith, and does hereby irrevocably constitute and appoint the Corporation to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

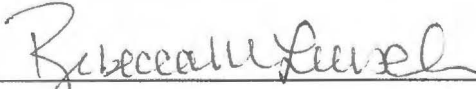
Dated: Oct. 2, 2017



Rita Nischal, Vice-President
Canandaigua National Bank and Trust Company

Witnessed by:

Print Name:



Rebecca M. Leusch